VIRGINIA SECTION

AFFIDAVITS BY CORPORATIONS AND AGENTS.—§ 276 of the Virginia Code of 1919 is as follows:

> "An affidavit by or for a corporation may be made by its president, vice-president, general manager, cashier, treasurer, or a director, without any special authorization therefor, or by any person authorized by a majority of its stockholders or directors to make the same; and when an affidavit is made by any person other than the principal authorized by law to make it, such person shall be deemed to have been the agent of the person so authorized until the contrary is made to appear."

The purpose of this section, which is new, is, as noted by the revisors, to change the law as announced in *Merriman & Co.* v. *Thomas*,[1] *Taylor* v. *Sutherlin-Meade Tob. Co.*,[2] *Clement* v. *Adams Bros.-Paynes Co.*,[3] and *Jones & Co.* v. *Hancock*,[4] holding that officers and servants of a corporation were not *ex officio* agents of the corporation, for the purpose of making affidavits for the corporation, when the affidavit did not show on its face that such officials were agents of the corporation, and duly authorized by the board of directors to make such an affidavit.

As a corporation can act only through its agents, it is necessary that some one should make an affidavit for it, and in order that the affidavit should be the affidavit of the corporation, it is necessary, at common law, that the person making it should be duly authorized to make it. It has been held, therefore, that an affidavit may be made and signed by some person authorized to represent the corporation, but the authority of any person assuming so to represent it must appear; and that no officer of a corporation, unless specially authorized, has power to make an affidavit for a corporation.[5]

According to the general rule of the common law, persons dealing with a corporation are bound at their peril to ascertain the nature and extent of the authority of the person assuming to act for the corporation.[6] This principle, however, is qualified by another, namely, that where a corporation allows another to rep-

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[1] 103 Va. 24, 48 S. E. 490.
[2] 107 Va. 787, 60 S. E. 132.
[3] 113 Va. 547, 75 S. E. 294.
[4] 117 Va. 511, 85 S. E. 460.
[5] Mahone *v.* Manchester, etc., R. Co., 111 Mass. 72, 15 Am. Rep. 9; Quigley *v.* Central Pac. R. Co., 11 Nev. 350, 21 Am. Rep. 757; Dodge *v.* Northwestern Union Packet Co., 13 Minn. 427. But see *contra*, Minnett *v.* Milwaukee & St. P. R. Co., 17 Fed. Cas. 449, holding that the president of a corporation is *prima facie* entitled to make an affidavit for the corporation.
[6] Bocock's Ex'r *v.* Alleghany Coal & Iron Co., 82 Va. 913, 1 S. E. 325, 3 Am. St. Rep. 128; Alexander *v.* Cauldwell, 83 N. Y. 480.

resent it in a particular transaction, it will be estopped to deny the apparent authority with which it has clothed him, to the prejudice of persons dealing with him as agent of the corporation.[7] But making an affidavit for a corporation is not considered as within the ordinary scope of authority of corporate agents.

The latter part of the new Virginia statute is broad enough to cover all cases, whether the principal be a natural or an artificial person. If the affidavit has been made by one purporting to act as the agent of another, the statute raises a *prima facie* presumption that he was authorized to make the affidavit in behalf of the principal, and places the burden of proving the contrary on him who denies the agency. It would seem, therefore, that the statute has modified a well-settled principle of the law of agency in so far as the authority of an agent to make an affidavit for his principal is concerned. P. M. P

ATTORNEY AND CLIENT—AGREEMENT FOR COMPENSATION.—*Bruce's Ex'x.* v. *Bibb's Ex'x.* (Va.), 105 S. E. 570.—Until an attorney undertakes the business of his client, the parties deal at arm's length,[1] and transactions between them are valid, in general, wherever they would be valid between other parties. Once the counsel agrees to serve as such, however, a relation of great confidence and trust,[2] similar to that between guardian and ward and trustee and *cestui que trust*,[3] springs up between them. The relation of the parties being one which opens wide the door to the exercise of fraudulent and undue influence on the part of the attorney, it is universally held that transactions between such parties will be closely scrutinized by the courts and pronounced voidable on the part of the client unless obviously fair and just.[4] It is generally held, however, that the mere existence of the relation between, and the entrance into a transaction by the parties is not enough. There must be, actually or presumptively, some abuse of confidence on the part of the attorney.[5]

There are a number of States which go further and hold that these transactions are not merely to be closely studied with an eye to the discovery of fraud or oppression, but that they are presumptively fraudulent[6] and that the burden of proof is on the

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[7] Mahoney Min. Co. *v.* Anglo-Californian Bank, 104 U. S. 192; McNeil *v.* Boston Chamber of Commerce, 154 Mass. 277, 28 N. E. 245, 13 L. R. A. 559; Hooe *v.* Oxley, 1 Wash. (Va.) 19, 1 Am. Dec. 425; Ashley Wire Co. *v.* Illinois Steel Co., 164 Ill. 149, 45 N. E. 410, 56 Am. St. Rep 187.

[1] See Elmore *v.* Johnson, 143 Ill. 513, 32 N. E. 413.

[2] Cooley *v.* Miller, 156 Cal. 510, 105 Pac. 981.

[3] Yonge *v.* Hooper, 73 Ala. 119.

[4] 6. C. J. 686.

[5] See Miles *v.* Ervin, 6 S. C. Eq. 524, 16 Am. Dec. 623.

[6] Cooley *v.* Miller, *supra.*